

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #12	CCRB Case #: 201802028	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/14/2018 9:37 PM	Location of Incident: 2070 Third Avenue	Precinct: 23	18 Mo. SOL 9/14/2019	EO SOL 9/14/2019	
Date/Time CV Reported Thu, 03/15/2018 9:28 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/15/2018 9:28 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Artur Espenberg	24642	952713	PSA 5
2. POM Joshua Faranda	31043	938461	PSA 5
3. POF Sheila Ramos	24844	953299	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A.POM Artur Espenberg	Abuse: Police Officer Artur Espenberg stopped § 87(2)(b)	
B.POF Sheila Ramos	Abuse: Police Officer Sheila Ramos stopped § 87(2)(b)	
C.POM Joshua Faranda	Abuse: Police Officer Joshua Faranda stopped § 87(2)(b)	
D.POM Artur Espenberg	Abuse: Police Officer Artur Espenberg stopped individuals.	
E.POF Sheila Ramos	Abuse: Police Officer Sheila Ramos stopped individuals.	
F.POM Joshua Faranda	Abuse: Police Officer Joshua Faranda stopped individuals.	
G.POF Sheila Ramos	Abuse: Police Officer Sheila Ramos frisked an individual.	
H.POF Sheila Ramos	Abuse: Police Officer Sheila Ramos searched an individual.	
I.POM Joshua Faranda	Abuse: Police Officer Joshua Faranda frisked an individual.	
J.POM Joshua Faranda	Abuse: Police Officer Joshua Faranda searched an individual.	
K.POM Joshua Faranda	Abuse: Police Officer Joshua Faranda frisked an individual.	
L.POM Joshua Faranda	Abuse: Police Officer Joshua Faranda searched an individual.	
M.POM Artur Espenberg	Abuse: Police Officer Artur Espenberg interfered with § 87(2)(b)'s use of a recording device.	
N.POM Artur Espenberg	Abuse: Police Officer Artur Espenberg frisked § 87(2)(b)	
O.POM Artur Espenberg	Abuse: Police Officer Artur Espenberg searched § 87(2)(b)	
P.POM Artur Espenberg	Abuse: Police Officer Artur Espenberg frisked § 87(2)(b)	
Q.POM Artur Espenberg	Abuse: Police Officer Artur Espenberg threatened to arrest § 87(2)(b)	
R.POM Artur Espenberg	Abuse: Police Officer Artur Espenberg refused to provide his name and shield number to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
S.POM Artur Espenberg	Discourtesy: Police Officer Artur Espenberg spoke discourteously to § 87(2)(b)	
T.POM Artur Espenberg	Discourtesy: Police Officer Artur Espenberg spoke discourteously to individuals.	

### Case Summary

On March 15, 2018, § 87(2)(b) filed this complaint with the CCRB by phone on behalf of himself and three of his friends who he refused to identify.

On March 14, 2018, at approximately 9:37 p.m., inside of the lobby of 2070 3 Avenue in Manhattan, PO Sheila Ramos, PO Artur Espenberg, and PO Joshua Faranda of PSA 5 stopped § 87(2)(b) (**Allegations A, B, and C: Abuse of Authority, § 87(2)(g)**) and his three unidentified friends (**Allegations D, E, and F: Abuse of Authority, § 87(2)(g)**). PO Ramos frisked and searched one of § 87(2)(b)'s friends (**Allegations G and H: Abuse of Authority, § 87(2)(g)**). PO Faranda frisked § 87(2)(b)'s second friend (**Allegation I: Abuse of Authority, § 87(2)(g)**). PO Faranda searched § 87(2)(b)'s second friend (**Allegation J: Abuse of Authority, § 87(2)(g)**). PO Faranda frisked and searched § 87(2)(b)'s third friend (**Allegations K and L: Abuse of Authority, § 87(2)(g)**). PO Espenberg prevented § 87(2)(b) from filming the incident with his cell phone (**Allegation M: Abuse of Authority, § 87(2)(b)**). PO Espenberg frisked § 87(2)(b)'s hand (**Allegations N: Abuse of Authority, § 87(2)(g)**). PO Espenberg searched § 87(2)(b) (**Allegation O: Abuse of Authority, § 87(2)(g)**). PO Espenberg frisked § 87(2)(b)'s pocket (**Allegation P: Abuse of Authority, § 87(2)(g)**). PO Espenberg threatened to arrest § 87(2)(b) (**Allegation Q: Abuse of Authority, § 87(2)(g)**). PO Espenberg refused to provide his name and badge number to § 87(2)(b) (**Allegation R: Abuse of Authority, § 87(2)(g)**). PO Espenberg said, "Shut the fuck up," to § 87(2)(b) (**Allegations S: Abuse of Authority, § 87(2)(g)**) and his friends (**Allegations T: Abuse of Authority, § 87(2)(g)**).

No arrests were made or summonses issued. There was no video of this incident (BR 01).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Artur Espenberg stopped § 87(2)(b)**  
**Allegation (B) Abuse of Authority: Police Officer Sheila Ramos stopped § 87(2)(b)**  
**Allegation (C) Abuse of Authority: Police Officer Joshua Faranda stopped § 87(2)(b)**  
**Allegation (D) Abuse of Authority: Police Officer Artur Espenberg stopped individuals.**  
**Allegation (E) Abuse of Authority: Police Officer Sheila Ramos stopped individuals.**  
**Allegation (F) Abuse of Authority: Police Officer Joshua Faranda stopped individuals.**

It is undisputed PO Espenberg (BR 02), PO Ramos (BR 03), and PO Faranda (BR 04) stopped § 87(2)(b) and his three friends on March 14, 2018, at approximately 9:30 p.m. in the lobby of 2070 3 Avenue in Manhattan.

§ 87(2)(b) (BR 05) and his three unidentified friends had taken an Uber to the location to visit another one of their friends who lives in the building. As soon as they exited the Uber, they went into the building. They did not stop outside the building and were not intoxicated. § 87(2)(b) denied that he or his friends had smoked any marijuana or had any marijuana with them. § 87(2)(b) refused to identify his friends, though he was informed this would hinder the investigation. There was no police documentation of his friends' names in MOS memo books (BR 20, BR 21, and BR 22), and the UF-250s (BR 09, BR 11, BR 12, and BR 15) prepared did not include any identifying information.

As they were waiting for the elevator, § 87(2)(b) (BR 05) realized that PO Espenberg, PO Ramos, and PO Faranda were police officers. § 87(2)(b) told this to his friends, and they decided to wait to go in the elevator until the officers left the lobby. They were discussing how much money they should send by Apple Pay to § 87(2)(b)'s phone to pay for the Uber, when PO Espenberg approached § 87(2)(b) and his friends and asked them what they were doing in the

building. § 87(2)(b) told him that they were going to meet a friend, but they were waiting a minute before going up. PO Espenberg then told § 87(2)(b) and his friends to stand up against the wall and spread their legs.

PO Espenberg (BR 02), PO Ramos (BR 03), and PO Faranda (BR 04) consistently said they were driving northbound on 3 Avenue when they saw § 87(2)(b) and his three friends standing outside of 2070 3 Avenue huddled in a circle passing around an object. They were approximately 10 to 20 feet away and observed § 87(2)(b) and his friends for approximately 10 seconds. PO Espenberg and PO Ramos saw that the object was lit, and PO Ramos additionally saw that smoke was emanating from the group; PO Faranda could not describe the object. PO Espenberg, PO Ramos, and PO Faranda all thought that this was behavior consistent with smoking marijuana, so they decided to approach the individuals to investigate further. They all also noted that the building is in a high-crime drug-prone location because it is known throughout the precinct for gang activity. PO Espenberg also noted that he has made multiple arrests for weapons possession in the building.

PO Espenberg entered the lobby from the rear entrance, and PO Ramos and PO Faranda approached § 87(2)(b) and his friends from the front. As they approached, PO Ramos (BR 03) and PO Faranda (BR 04) smelled a strong odor of burnt marijuana coming from the § 87(2)(b) and his friends. PO Ramos identified herself and PO Faranda as police officers. As soon as she did, § 87(2)(b) and his friends walked into the lobby of the building. PO Ramos and PO Faranda thought that they did this to avoid police contact. When § 87(2)(b) and his friends entered the lobby, PO Espenberg (BR 02) immediately smelled a strong odor of marijuana.

When PO Ramos (BR 03) and PO Faranda (BR 04) entered the building, PO Ramos asked § 87(2)(b) and his friends if they lived there or were visiting anyone, but they did not answer her. PO Espenberg (BR 02) could not recall if he identified himself as police officer, but he had his badge visibly hanging around his neck. PO Espenberg could not recall if he asked § 87(2)(b) and his friends if they lived there or if they were visiting a friend. He did not hear PO Ramos ask them this.

PO Espenberg and PO Ramos both saw § 87(2)(b) and his friends push the button for the elevator, but when it came, they did not get on.

New York Penal Law 221.10 (BR 07) states that a person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses marihuana in a public place, and such marihuana is burning or open to public view.

In People v. Schobert, 93 A.D.2d 949, 1983 (BR 08), the court found that a lighted object passed among a group of individuals paired with the odor of marijuana gave officers probable cause to believe that a crime had been or was being committed in their presence.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Police Officer Sheila Ramos frisked an individual.**

**Allegation (H) Abuse of Authority: Police Officer Sheila Ramos searched an individual.**

It is undisputed that PO Ramos frisked one of § 87(2)(b)'s friends. § 87(2)(g)

§ 87(2)(b) (BR05) saw PO Ramos with one of his friends by the front entrance to the lobby. PO Ramos patted down his friend, emptied out his pockets, and then put everything back. § 87(2)(b) was across the lobby and could not clearly see or hear what was said between his friend and PO Ramos.

In a follow up phone call, § 87(2)(b) said both his friends later told him that officers did not remove items from their pockets. § 87(2)(b) refused to provide contact information for his friend; therefore, the investigation was unable to obtain a statement from him.

PO Ramos (BR 03) approached one of the male individuals who was standing by the front entrance to the lobby. She saw that this individual had a small black object in his hand, which was balled into a fist. The object fit into the palm of his hand. She was not sure what the object was but suspected that it may have been a small knife or a handheld Taser based on its general size and shape. The male individual put his closed fist with the small object into his jacket pocket. PO Ramos asked him to take his hand out of his pocket, but he did not immediately comply. PO Ramos asked him to remove his hand a second time, and he removed his hand, still in a fist from his jacket pocket. PO Ramos asked him if he had anything in his hand, and he replied that he did not. He opened his hand, but there was nothing in it. She then observed a small hand sized square object in the individual's pocket.

Because the individual had put his hand into his pocket with an object she believed to be either a small knife or a Taser, he had not initially complied with her request to remove his hand from his pocket, when he did remove his hand from his pocket there was nothing in his hand, and because she subsequently observed a hand-sized square object in his jacket pocket, PO Ramos decided to frisk the jacket pocket. Upon doing so, she determined that the object was a phone charger because she could feel the prongs, and because the individual then told her that it was a phone charger. PO Ramos denied removing anything from the individual's pockets.

PO Espenberg (BR 02) and PO Faranda (BR 04) were both focused on other individuals, so they did not see what was happening with PO Ramos and § 87(2)(b)'s friend.

PO Ramos completed a Stop Report (BR 09), which supports her statement.

§ 87(2)(g)

**Allegation (I) Abuse of Authority: Police Officer Joshua Faranda frisked an individual.**  
**Allegation (J) Abuse of Authority: Police Officer Joshua Faranda searched an individual.**  
**Allegation (K) Abuse of Authority: Police Officer Joshua Faranda frisked an individual.**  
**Allegation (L) Abuse of Authority: Police Officer Joshua Faranda searched an individual.**

It is undisputed that PO Faranda frisked one of § 87(2)(b)'s friends. § 87(2)(g)

§ 87(2)(b) (BR 05) saw PO Faranda standing with two of his friends by the front entrance to the lobby. PO Faranda patted down both of his friends, emptied out their pockets, and then put everything back into their pockets. § 87(2)(b) was across the lobby and could not clearly see or hear what was said between his friends and PO Faranda. In a follow up phone call with § 87(2)(b) he said that both of his friends later told him that PO Faranda did not remove any bags from their pockets.

§ 87(2)(b) refused to provide contact information for his friends; therefore, the investigation was unable to obtain a statement from him.

PO Faranda (BR 04) approached two of § 87(2)(b)'s friends by the front entrance to the lobby. One of the individuals reached his hand toward one of his jacket pockets. PO Faranda told him not to do this, but he reached for the same pocket again. PO Faranda told the individual a second time not to reach for his pocket, but the individual did not comply, and reached for his pocket again. PO Faranda did not observe a bulge in the individual's pocket, but because he refused to comply with his repeated requests not to reach for his pocket, PO Faranda decided to pat down the jacket pocket to see if there was a weapon inside as a safety precaution.

PO Faranda patted down the jacket pocket and found no evidence of a weapon, but he saw the top of a small one inch by one inch clear plastic bag sticking out of the individual's pocket. Because the initial reason that PO Faranda, PO Ramos, and PO Espenberg approached § 87(2)(b) and his friends was because they believed that they were smoking marijuana in public, PO Faranda suspected that the bag contained marijuana, so he removed it from the individual's pocket. PO Faranda saw that the bag was empty but smelled it and noted that it smelled like marijuana. PO Faranda gave the empty bag back to the individual after he smelled it.

PO Faranda denied frisking or searching the other individual.

PO Ramos (BR 03) and PO Espenberg (BR 02) did not see the interactions between PO Faranda and these two individuals.

PO Faranda completed two stop reports regarding this incident (BR 11 and BR 12), which generally support his testimony. PO Faranda did not note the plastic bag as contraband because the bag, although it smelled like marijuana, was empty. PO Faranda did not note on the report that the individual had been searched because he did not consider the removal of the bag to be a search.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (M) Abuse of Authority: Police Officer Artur Espenberg interfered with § 87(2)(b)'s use of a recording device.**

§ 87(2)(b) (BR 05) asked PO Espenberg if he could record the incident and tried to turn his phone on as PO Espenberg first approached him. PO Espenberg told § 87(2)(b) that he could not record until officers had left the area. PO Espenberg then reached out to take § 87(2)(b)'s phone from his hand.

PO Espenberg (BR 02) denied ever telling § 87(2)(b) that he could not record the incident or taking any steps to prevent him from doing so and did not recall § 87(2)(b) or any of the other individuals attempting to record the incident.

PO Ramos (BR 03) and PO Faranda (BR 04) did not observe § 87(2)(b) attempt to record the incident nor did they hear PO Espenberg tell § 87(2)(b) that he could not record the incident.

§ 87(2)(g)

**Allegation (N) Abuse of Authority: Police Officer Artur Espenberg frisked § 87(2)(b)**

**Allegation (O) Abuse of Authority: Police Officer Artur Espenberg searched § 87(2)(b)**

**Allegation (P) Abuse of Authority: Police Officer Artur Espenberg frisked § 87(2)(b)**

It is undisputed that PO Espenberg frisked and searched § 87(2)(b) § 87(2)(g)

§ 87(2)(b) (BR 05), having asked if he could record the incident with his phone, was holding his phone when PO Espenberg reached for it and removed it from his hand. As he did so, the phone fell out of the case and onto the floor, sustaining damage to the back of the phone. § 87(2)(b) did not think that this was a deliberate action. As such, a corresponding allegation has not been pleaded. PO Espenberg picked up § 87(2)(b)'s phone and told § 87(2)(b) to put his hands against the wall, which he did. PO Espenberg emptied out § 87(2)(b)'s pants pockets, which contained his wallet, a small keyring with three keys on it, and money, and then put everything back. He then patted down § 87(2)(b)'s legs, waist, and chest.

When PO Espenberg (BR 02) approached § 87(2)(b) who was standing by the elevator, he noticed that § 87(2)(b) had a cell phone-shaped object in his hand, but he could not be sure of what it was. PO Espenberg suspected that it may have been a Taser or a knife attached to a cell phone because he has received training indicating that such weapons can be easily attached to cell phones. § 87(2)(b) purposefully turned his body to the side so that PO Espenberg could not see what he had in his hand. PO Espenberg tried to move so that he could see what the object was, but § 87(2)(b) continued to turn his body, concealing the object in his hand. PO Espenberg thought that he told § 87(2)(b) to show him what he had in his hand, but he could not be sure of this.

§ 87(2)(b)'s turning motion to conceal what he had in his hand combined with the fact that the building was in a crime prone area made PO Espenberg think that § 87(2)(b) had a weapon in his hand, so he reached across § 87(2)(b)'s front and grabbed § 87(2)(b)'s right wrist. § 87(2)(b) tensed his body and was grinding his teeth. He then saw that § 87(2)(b) had a cell phone in his

right hand, and not a weapon. PO Espenberg took the cell phone out of § 87(2)(b)'s hand. § 87(2)(b) was still grinding his teeth and tensing his body, so PO Espenberg put § 87(2)(b)'s right wrist into a handcuff because he thought that § 87(2)(b) might strike him.

PO Espenberg then put the phone into § 87(2)(b)'s pocket. As he did so, the tips of his fingers went into § 87(2)(b)'s pocket, and he felt the tip of something sharp, like a pen. Prior to doing this, PO Espenberg had not noticed any bulges on § 87(2)(b)'s person and had not suspected that he had any weapons on him other than what he may have been concealing in his hand, which was, he had confirmed by this point, a cell phone. Because he suspected that the tip may have been indicative of a knife, PO Espenberg patted down the right side of § 87(2)(b)'s body. He was then able to determine that he had felt the tip of a pen, and not a knife. PO Espenberg also saw a small plastic zip lock bag sticking out of § 87(2)(b)'s pants pocket, but he did not remove this item.

PO Ramos (BR 03) and PO Faranda (BR 04) did not observe PO Espenberg interacting with § 87(2)(b) because they were focused on the other individuals.

A Stop Report (BR 15) completed by PO Espenberg was generally consistent with his statement. PO Espenberg indicated on the form that the reason for the frisk was an observed bulge. PO Espenberg clarified during his statement that the bulge was the tip of the pen that he felt in § 87(2)(b)'s pocket. PO Espenberg did not indicate on the form that § 87(2)(b) was searched because he did not consider putting the tips of his fingers into § 87(2)(b)'s pocket to be a search. PO Espenberg also noted on the form that he found a plastic bag with residue. He clarified during his statement that he was referring to the bag he observed sticking out of § 87(2)(b)'s pocket, which he did not remove. He defined the residue as crumbs that appeared to be marijuana, although he was not sure of this because he did not remove the bag to further investigate.

According to People v. De Bour, 40 N.Y.2d 210, 1976 (BR 10), a frisk is authorized when an officer reasonably suspects that the person is armed and dangerous. Also noted above, People v. Reid, 24 NY.3d 615, 2014 (BR 13), states that a search must be incident to an actual arrest and not just to probable cause that may have led to an arrest.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)



§ 87(2)(g)

**Allegation (Q) Abuse of Authority: Police Officer Artur Espenberg threatened to arrest**

§ 87(2)(b)

It is undisputed that PO Espenberg (BR 02) told § 87(2)(b) (BR 05) that he could arrest him.

§ 87(2)(g)

**Allegation (R) Abuse of Authority: Police Officer Artur Espenberg refused to provide his name and shield number to § 87(2)(b)**

**Allegation (S) Abuse of Authority: Police Officer Artur Espenberg spoke discourteously to**

§ 87(2)(b)

**Allegation (T) Abuse of Authority: Police Officer Artur Espenberg spoke discourteously to individuals.**

§ 87(2)(g)

§ 87(2)(b) (BR 05), while PO Espenberg was patting him down, asked PO Espenberg for his name and shield number. PO Espenberg told him that his name was “Valentin” and that his badge number was “24844.” § 87(2)(b) asked PO Espenberg why the officers stopped him and PO Espenberg responded by putting one of § 87(2)(b)'s hands into a handcuff. One of § 87(2)(b)'s friends told PO Espenberg to stop, and PO Espenberg said, “Shut the fuck up and tell him § 87(2)(b) to go upstairs and mind his own business.” § 87(2)(b) said that he would go upstairs, and PO Espenberg removed the handcuff. He and his friends then went in the elevator and did not further interact with PO Espenberg, PO Ramos, or PO Faranda.

§ 87(2)(b) refused to provide contact information for his friends; therefore, the investigation was unable to obtain a statement from him.

After PO Espenberg (BR 02) patted down § 87(2)(b)'s right side, one of § 87(2)(b)'s friends told § 87(2)(b) to calm down, which he did. Seeing that § 87(2)(b) was no longer a threat, PO Espenberg removed the handcuff from § 87(2)(b)'s right wrist. § 87(2)(b) and his three friends all went into the elevator and had no further interactions with the officers.

PO Espenberg denied providing his name as “Valentin” and his badge number as “24844.” Rather, he gave § 87(2)(b) his correct name and badge number, which is 24642, when asked. PO Espenberg denied ever saying, “Shut the fuck up and tell him § 87(2)(b) to go upstairs and mind his own business,” or using any other profanities during the incident. PO Ramos (BR 03) did not hear § 87(2)(b) request PO Espenberg's name or badge number nor did she hear him provide it to § 87(2)(b). PO Faranda (BR 04) heard § 87(2)(b) ask PO Espenberg for his name and badge number and heard PO Espenberg provide this to him. PO Ramos and PO Faranda both denied hearing PO Espenberg say, “Shut the fuck up and tell him § 87(2)(b) to go upstairs and mind his own business,” or use any profanity during the incident.

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 16).
- PO Sheila Ramos has been a member of service for five years and has been a subject in one CCRB complaint with a total of three allegations, none of which as substantiated. § 87(2)(g)
- PO Joshua Faranda has been a member of service for 12 years and has been a subject in six CCRB complaints with a total of 11 allegations, of which one was substantiated:
  - 200902991 involved a substantiated allegation of a frisk against PO Faranda. The Board recommended Charges and the NYPD imposed Instructions.
  - § 87(2)(g)
- PO Artur Espenberg has been a member of service for five years and has been a subject in two CCRB complaints with a total of four allegations, of which one was substantiated:
  - 201504644 involved a substantiated allegation of a refusal to provide name and shield number against PO Espenberg. The Board recommended Charges and the NYPD has not yet imposed discipline.
  - § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of May 15, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 17).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: 12

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Reviewer: \_\_\_\_\_  
Signature                      Print Title & Name                      Date